

1 DAVID Z. CHESNOFF, ESQ.  
2 Nevada Bar No. 2292  
3 RICHARD A. SCHONFELD, ESQ.  
4 Nevada Bar No. 6815  
5 520 South Fourth Street  
6 Las Vegas, Nevada 89101  
7 Tel.: [702] 384-5563  
8 [dzchesnoff@cslawoffice.net](mailto:dzchesnoff@cslawoffice.net)  
9 [rschonfeld@cslawoffice.net](mailto:rschonfeld@cslawoffice.net)  
10 Attorneys for Defendant  
11 FEREIDOUN KHALILIAN

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12 UNITED STATES DISTRICT COURT  
13 DISTRICT OF NEVADA

14 \* \* \* \*

15 UNITED STATES OF AMERICA )  
16 Plaintiff, ) CASE NO. 2:23-MJ-536-DJA  
17 vs. )  
18 FEREIDOUN KHALILIAN, )  
19 Defendant. )  
20 \_\_\_\_\_)

21 **DEFENDANT FEREIDOUN KHALILIAN'S MOTION FOR PRETRIAL RELEASE**

22 COMES NOW, Defendant, FEREIDOUN KHALILIAN, by and through his attorneys  
23 David Z. Chesnoff, Esq., and Richard A. Schonfeld, Esq., and hereby files this Motion for  
24 Pretrial Release. This Motion is made and based upon the papers and pleadings on file in this  
25 matter, the attached Memorandum of Points & Authorities, and any and all oral argument  
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1 adduced at the time of hearing.

2 **DATED** this 22<sup>nd</sup> day of June, 2023.

3 Respectfully Submitted:

4 **CHESNOFF & SCHONFELD**

5 /s/ David Z. Chesnoff

6 **DAVID Z. CHESNOFF, ESQ.**

7 Nevada Bar No. 2292

8 **RICHARD A. SCHONFELD, ESQ.**

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11 Las Vegas, Nevada 89101

12 (702) 384-5563

13 Attorneys for Defendant

14 **FEREIDOUN KHALILIAN**

1                   **MEMORANDUM OF POINTS & AUTHORITIES**

2                   **I. MR. KHALILIAN'S BACKGROUND:**

3                   Mr. Khalilian has no felony criminal history, has a stable residential history, has a stable  
4 employment history, and has tremendous family support. Mr. Khalilian is a United States  
5 Citizen and has resided in the State of Florida since 1989. Mr. Khalilian's brother Homayun  
6 Khalilian, who owns and operates 3 DMV offices in California (which require security clearance)  
7 will be in Court and has agreed to act as a third party custodian if needed. Mr. Khalilian's adult  
8 son will also be in Court for the hearing on this Motion. All of Mr. Khalilian's family resides in  
9 the United States and have close contact with him.

10                  Among the factors for the Court to consider is Mr. Khalilian's health. Mr. Khalilian has a  
11 significant medical condition, after suffering two heart attacks, that requires him to take over a  
12 dozen medications daily. It is respectfully submitted that release conditions can be fashioned to  
13 alleviate any concerns that this Honorable Court has related to Mr. Khalilian, which will permit  
14 Mr. Khalilian to continue with his medical regimen related to his heart condition.

15                  **II. IN OUR SOCIETY LIBERTY IS THE NORM AND DETENTION PRIOR TO  
16 TRIAL IS THE CAREFULLY LIMITED EXCEPTION.**

17                  In our society liberty is the norm, and detention prior to trial or without trial is the  
18 carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755, 107 S. Ct. 2095, 2105,  
19 95 L.Ed.2d 697 (1987). This sentiment was ingrained in our justice system prior to the passage  
20 of the Bail Reform Act, *see Stack v. Boyle*, 342 U.S. 1, 3 (1951), and it remains an essential part  
21 of our system today. In keeping with this fundamental principle of justice, Congress passed the  
22 Bail Reform Act of 1984, which is a "narrowly-drafted statute" that focuses its pretrial detention  
23 provision on "a small but identifiable group of particularly dangerous defendants." *United States*  
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1       *v. Himler*, 797 F.2d 156, 160 (3d Cir.1986). The Act does nothing to alter or limit the  
2 presumption of innocence before trial. 18 U.S.C. § 3142(j).

3              Under the current version of the Act, a judicial officer:

4              shall order the pretrial release of [a defendant] on personal recognizance, or upon  
5 execution of an unsecured appearance bond in an amount specified by the court . .  
6 . unless the judicial officer determines that such release will not reasonably assure  
7 the appearance of the person as required or will endanger the safety of any other  
person or the community.

8       18 U.S.C. § 3142(b). If the conditions outlined in subsection (b) will not serve to assure the  
9 appearance of the defendant at trial or will endanger another person or the community, the  
10 judicial officer shall order the pretrial release of the person “subject to the least restrictive further  
11 condition, or combination of conditions” necessary to meet the requirements of the Act. 18  
12 U.S.C. § 31429(c)(1)(B); *see also United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991).

13       Thus, the Act limits the application of pretrial detention to a small category of offenders in a  
14 limited number of circumstances. *See United States v. Salerno*, 481 U.S. at 747 (noting that the  
15 Act “carefully limits the circumstances under which detention may be sought to the most serious  
16 of crimes”). For that reason, courts have held that “[o]nly in rare circumstances should release be  
17 denied, and doubts regarding the propriety of release should be resolved in the defendant’s  
18 favor.” *United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985); *Gebro*, 948 F.2d at  
19 1121. The *Motamedi* court further reminded the lower courts to “bear in mind that federal law  
20 has traditionally provided that a person arrested for a noncapital offense shall be admitted to  
21 bail.” *Motamedi*, 767 F.2d at 1405.

22              As this Court knows, pretrial detention is not merely a restriction on the liberty of a  
23 defendant. The United States Supreme Court has long held that fundamental Fifth and Sixth  
24 Amendment rights may also be irreparably compromised by such detention. *See Stack*, 342 U.S.  
25

1 at 4. The *Stack* court detailed the history and purpose of bail pending trial, stating, in pertinent  
2 part:

3 From the passage of the Judiciary Act of 1789, 1 Stat. 73 91, to the present  
4 Federal Rules of Criminal Procedure, Rule 46(a)(1), federal law has unequivocally  
5 provided that a person arrested for a noncapital offense shall be admitted to bail.  
6 This traditional right to freedom before conviction permits the unhampered  
7 preparation of a defense, and serves to prevent the infliction of punishment prior  
8 to conviction. Unless the right to bail before trial is preserved, the presumption of  
9 innocence, secured only after centuries of struggle would lose its meaning.

10 *Id.* at 4.

11 Even where a defendant poses a danger, he must still be released if there is a “condition  
12 or combination of conditions [that] will reasonably assure ... the safety of any other person and  
13 the community.” *United States v. Hir*, 517 F.3d 1081, 1092 (9th Cir. 2008) (citing 18 U.S.C. §  
14 3142(e)). The *Hir* court also noted that:

15 the Bail Reform Act contemplates only that a court be able to  
16 “reasonably assure, rather than guarantee,” the safety of the  
17 community. See *United States v. Tortora*, 922 F.2d 880, 884 (1st  
18 Cir.1990) (“Undoubtedly, the safety of the community can be  
19 reasonably assured without being absolutely guaranteed....  
20 Requiring that release conditions guarantee the community's safety  
21 would fly in the teeth of Congress's clear intent that only a limited  
22 number of defendants be subject to pretrial detention.”).

23 *Hir*, 517 F.3d at 1092, n 9.

24 The factors which must be considered in determining whether there are conditions of  
25 release that will reasonably assure appearance of the person and the safety of the community are:  
26 1) nature and seriousness of the offense charged; 2) weight of evidence against defendant<sup>1</sup>; 3)

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28 <sup>1</sup>The weight of the evidence is the least important, and the statute neither requires nor permits  
29 a pretrial determination of guilt. *United States v. Winsor*, 785 F.2d 755, 757 (9th Cir.1986);  
30 *Motamedi*, 767 F.2d at 1408.

1 defendant's character; 4) physical and mental condition; 5) family and community ties; 6) past  
2 conduct; 7) history relating to drug and alcohol abuse; 8) criminal history; and 9) nature and  
3 seriousness of danger to any person or community that would be posed by defendant's release.  
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5 *Motamedi*, 767 F.2d. at 1407. The Government bears the burden of showing that, considering all  
6 of these factors, no set of conditions can be crafted that will reasonably ensure the defendant's  
7 presence at trial and ensure the safety of the community.

8 While counsel understands that the charges are serious and that the government will  
9 assert that it has evidence in support of the charges<sup>2</sup>, all remaining factors weigh strongly in favor  
10 of Mr. Khalilian being released on conditions. Mr. Khalilian has family ties and support, has no  
11 felony criminal history, has no history of drug or alcohol abuse, and has a significant medical  
12 condition that requires daily medications.

13 It is respectfully submitted that the Government cannot meet its burden in this case as  
14 the conditions proposed by Mr. Khalilian alleviate any concerns presented.  
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28 *United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991).

<sup>2</sup>It is respectfully submitted that there are also factual and legal defenses to the allegations.

1 As a result of the foregoing, it is respectfully submitted that Mr. Khalilian be released on  
2 the following conditions:

- 3           1. Third party custody of his brother;  
4           2. House arrest;  
5           3. Electronic monitoring;  
6           4. Intensive Pretrial Supervision;  
7           5. A signature bond in the amount of \$250,000.

8           **DATED** this 22<sup>nd</sup> day of June, 2023.

9           Respectfully submitted:

10           **CHESNOFF & SCHONFELD**

11           \_\_\_\_\_  
12           /s/ David Z. Chesnoff  
13           **DAVID Z. CHESNOFF, ESQ.**  
14           Nevada Bar No. 2292  
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19           (702) 384-5563  
20           **Attorneys for Defendant**  
21           **FEREIDOUN KHALILIAN**